

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	Cause No. 1:02-CR-117-TS
)	
ZAIRE M. YOUNG)	

OPINION AND ORDER

This matter is before the Court on the pro se Defendant's request that the Court modify his sentence [DE 87], filed on May 31, 2005. The government responded to the Defendant's Motion on June 13, 2005, and the Defendant filed his reply on June 23, 2005.

The Court sentenced Defendant Zaire Young to forty-six months of imprisonment on November 21, 2003. The Defendant now moves this Court to modify his sentence pursuant to 18 U.S.C. § 3582 or 18 U.S.C. § 3553.

The Court will not consider the Defendant's request under 18 U.S.C. § 3553 or 18 U.S.C. § 3582(a) because these sections only concern what a Court must consider at the time of sentencing. As the Defendant has already been sentenced, they do not apply to his request. The proper subject of his request is § 3582(c), which governs the conditions under which a court may modify a sentence already imposed. That section reads:

(c) **Modification of an imposed term of imprisonment.** – The court may not modify a term of imprisonment once it has been imposed except that –

(1) in any case –

(A) the court, upon motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section

3553(a) to the extent that they are applicable, if it finds that –

- (i) extraordinary and compelling reasons warrant such a reduction; or
- (ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g);

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission; and

- (B) the court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure; and

- (2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

In this case, § 3582(c)(1) does not apply because the Director of the Bureau of Prisons has not requested that the Court reduce the Defendant's sentence. Furthermore, § 3582(c)(2) does not apply because the government states, and the Defendant has not shown otherwise, that the guidelines the Court considered when determining the Defendant's sentence have not since been revisited and lowered by the Sentencing Commission. Accordingly, the Court lacks statutory authority to fulfill the Defendant's request and modify his sentence.

The Court applauds the Defendant's efforts to better himself while in prison and hopes that he will continue to make good use of the resources available to him in prison and will implement

what he has learned when he is released. However, his Motion does not present this Court with any opportunity to modify his sentence.

For the reasons stated, the Defendant's Request to Modify his Sentence [DE 83] is DENIED.

SO ORDERED on June 30, 2005.

S/ Theresa L. Springmann
THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT